

11

No. 2792

United States
Circuit Court of Appeals
For the Ninth Circuit.

POMONA FRUIT GROWERS EXCHANGE, a
Corporation,

Appellant,

vs.

FRED STEBLER,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

Filed

MAY 25 1916

F. D. Moulton,
Clerk.

No. 2792

United States
Circuit Court of Appeals

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POMONA FRUIT GROWERS EXCHANGE, a
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Appellant:

N. A. ACKER, Esq., Foxcroft Building, 68 Post
Street, San Francisco, California.

For Appellee:

FREDERICK S. LYON, Esq., 504-7 Merchants
Trust Building, Los Angeles, California.

Citation [on Appeal].

[3*]

UNITED STATES OF AMERICA,—ss.

The President of the United States to Fred Stebler,
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty (30) days from the date hereof, pursuant to an order allowing an appeal entered and of record in the clerk's office of the United States District Court for the Southern District of California, Southern Division, in suit in equity No. A-44 therein, and wherein you are the complainant and appellee and Pomona Fruit Growers Exchange is defendant and appellant, to show cause, if any there be, why the decree of said court made and entered therein dismissing plaintiff's Bill of Complaint and adjudging that you recover of said appellant and defendant the sum of \$36.20, should not be corrected,

*Page-number appearing at foot of page of original certified Record.

and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable OSCAR A. TRIPPET, United States District Judge for the Southern District of California, Southern Division this 21 day of January, 1916.

[Seal]

OSCAR A. TRIPPET,
United States District Judge.

Due service of a copy of the above citation is hereby acknowledged this 21st day of January, 1916.

FREDERICK S. LYON,
Solicitor for Complainant and Appellee. [4]

[Endorsed]: No. A-44—Eq. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant and Appellee vs. Pomona Fruit Growers Exchange, Defendant and Appellant. Citation. Filed Feb. 4, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [5]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. A-44—EQUITY.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,
Defendant. [6]

*United States District Court, Southern District of
California, Southern Division.*

IN EQUITY—No. A-44.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,

Defendant,

AND

FRED STEBLER,

In Cases Nos. A-43, 45, 49, 50, 51,

Complainant,

52, 53, 54, 55, 56,

vs.

57 58, 62, 63, 64,

65, 66, 67, 70, 71,

S U N D R Y D E F E N D -

73, 74, 75, 76, 77,

ANTS.

78, 86, 90, A-8

No. Division and

Cir. Ct. No. 1675.

Motion to Dismiss.

To the Honorable, the Judges of the Above-entitled
Court:

Come now the defendants to the above-mentioned
suits pending in this court, and through their attorney—N. A. Acker, Esq., move this Honorable Court
that an order be granted dismissing each and every
of the above-mentioned suits, with costs to the
defendants.

The grounds assigned for said motion and the
granting of an order for dismissal with costs to the
defendants are:

1. That the above-entitled suits are for the in-
fringement [7] of Re-issue Letters Patent No.
12,297, particularly claims 1 and 10 thereof, by the
use of Fruit Grading Machines, involved in Equity

suit No. 1562, entitled Fred Stebler vs. Riverside Heights Orange Growers Association and George D. Parker.

2. That all of the machines involved in the above-mentioned suits for infringement of said letters Patent are machines which were purchased from George D. Parker, one of the defendants to Equity suit No. 1562, pending in this court and entitled Fred Stebler vs. Riverside Heights Orange Growers Association and George D. Parker, the said George D. Parker, being the manufacturer and seller of the said alleged infringing machines.

3. That an accounting and final decree have been had in said Equity suit No. 1562 and under the said accounting therein the said George D. Parker accounted for each and every of the Fruit Graders involved in each of the above-mentioned suits for infringement, pending against these defendants herein.

4. That under said accounting full damages and profits for each and every of the said infringing machines manufactured and sold by the said George D. Parker to the defendant users herein were awarded unto the said Fred Stebler, complainant, to said Equity suit No. 1562 and complainant, to each of the above-entitled [8] suits, and the judgment for said damages and profits has been satisfied by the said George D. Parker, in said suit No. 1562, and satisfaction entered of record.

5. That under the decision of this Court, rendered by his Honor, Olin Wellborn, and entered Feby. 18, 1914, *re* Equity suit No. 1562, the satisfac-

tion of judgment awarded against defendants to said Equity suit, No. 1562, releases the infringing machines involved herein and gives unto the users, the defendants herein, free right to the use of said machines without payment of further tribute to the patent monopoly or to the owner of the letter patent, the complainant herein.

6. That said decision of his Honor, Olin Wellborn, on an appeal taken to the United States Circuit Court of Appeals for the Ninth Circuit from the order granted under and in conformity with such decision, was sustained by the said United States Circuit Court for the Ninth Circuit, as more fully appears in the decision of said Court, 214 Fed. Rep. 550.

7. That no necessity, legal or otherwise, existed prior to the accounting against the defendants to said Equity suit No. 1562 for the institution of suit against the defendants to the above-mentioned pending suits, which defendants comprised mere users of the infringing [9] machines manufactured and sold by the said George D. Parker—one of the defendants to Equity Suit No. 1562.

8. That no machine is involved in any of the above-mentioned suits which has not been accounted for by the said George D. Parker and included in the judgment of this Court for damages and profits, which judgment, as above stated, has been satisfied by the said George D. Parker.

Wherefore an order for the dismissal of each and

every of the above-mentioned suits with costs to the defendants is prayed for.

Respectfully submitted,

N. A. ACKER,

Solicitor for Defendants.

San Francisco, California, November 13, 1915.

[Endorsed]: No. A-44. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Pomona Fruit Growers Exchange, and Sundry Defendants. Motion to Dismiss. Filed Nov. 15, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendants. [10]

[**Minutes of Court—November 29, 1915.**]

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the twenty-ninth day of November, in the year of Our Lord, one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. A-44—EQUITY.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,
Defendant.

This cause coming on this day to be heard on defendant's motion that this suit, together with other suits by the same complainant against various defendants, be dismissed, with costs to the defendants in said suits; Frederick S. Lyon, Esq., appearing as counsel for complainant; N. A. Acker, Esq., appearing as counsel for defendant; and said motion having been argued, in support thereof, by N. A. Acker, Esq., of counsel for defendant; and Court, at the hour of 12 o'clock M., having taken a recess until the hour of 2 o'clock, P. M., of this day; and now, at the hour of 2 o'clock P. M., Court having reconvened; and counsel being present as before; and said motion having been further argued, in support thereof, by N. A. Acker, Esq., of counsel for defendant, and in opposition thereto by Frederick S. Lyon, Esq., of counsel for complainant, and in support thereof in reply by N. A. Acker, Esq., of counsel for defendant; and this cause having been submitted to the Court for its consideration and decision on defendant's said motion to dismiss; it is now by the court ordered that defendant's said motion to dismiss this suit, with costs against complainant, be, and the same hereby is denied; and it is further ordered by the Court, on motion of Frederick S. Lyon, Esq., of counsel for complainant, that [11] the Bill of Complaint herein be dismissed, with costs against defendant, a decree accordingly to be prepared and submitted by counsel for complainant. [12]

[Decree of Dismissal.]

*United States District Court, Southern District of
California, Southern Division.*

IN EQUITY—No. A-44.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,
Defendant.

It is hereby ordered, adjudged and decreed that Complainant's Bill of Complaint in the above-entitled suit be and the same is hereby dismissed, and that complainant recover of and have judgment against defendant for the sum of thirty-six & 20/100 dollars, complainant's costs and disbursements herein.

OSCAR A. TRIPPET,
District Judge.

Dated Los Angeles, California, December 6, 1915.

Decree entered and recorded Dec. 6, 1915.

WM. M. VAN DYKE,
Clerk U. S. District Court, Southern District of
California.

By Leslie S. Colyer,
Deputy.

[Endorsed]: No. A-44—Eq. United States District Court, Southern District of California, Southern Division. Fred Stebler vs. Pomona Fruit Growers Exchange. Decree. Filed Dec. 6, 1915. Wm.

M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Frederick S. Lyon, 504-7 Merchants Trust Building, Los Angeles, Cal. [13]

*In the United States District Court, Southern
District of California, Southern Division.*

IN EQUITY—No. A-44.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,
Defendant.

Statement of Proceedings.

For the purpose of an appeal on behalf of defendant to the United States Circuit Court of Appeals for the Ninth Circuit, the following constitutes a stipulated record in narrative form of the proceedings had and taken in the above-entitled suit in the above-entitled court:

On July 16th, 1913, complainant filed his Bill of Complaint, alleging the infringement by defendant of re-issue letters patent Number 12,297 and particularly claims 1 and 10 thereof, owned by complainant.

Defendant answered denying the validity of said letters patent alleging anticipation by prior patents, etc.; and denying infringement.

On November 25th, 1913, complainant moved for a preliminary injunction.

On May 24th, 1910, complainant filed a Bill of

Complaint against Riverside Heights Orange Growers Association and George D. Parker, in Equity suit number 1562. Defendants duly answered therein and upon final hearing on September 17, [14] 1912, decree was entered dismissing complainant's Bill of Complaint in suit 1562; thereafter complainant appealed from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, the proceedings on which appeal are hereby referred to and by reference made a part hereof, the same being entitled Fred Stebler, Appellant, vs. Riverside Heights Orange Growers Association and George D. Parker, Appellees, number 2232 in said United States Circuit Court of Appeals, which court announced its opinion reversing said decree of dismissal; that within thirty days of the announcing of said opinion, appellees applied to said United States Circuit Court of Appeals for the Ninth Circuit to stay its mandate for a sufficient time to enable appellees to present a petition to the Supreme Court of the United States for a Writ of Certiorari, and upon such application said Court ordered that its mandate be stayed until the Supreme Court of the United States had acted upon such petition, upon appellees executing a bond for \$5,000; upon the denial of said Writ by said Supreme Court the mandate of said United States Circuit Court of Appeals for the Ninth Circuit was issued and filed in the trial court and upon November 5th, 1913, this court made and entered its interlocutory decree vacating its decree of dismissal and adjudging that said re-issue patent 12,297 and claims

1 and 10 thereof were valid, owned by complainant, and had been infringed by said George D. Parker and said Riverside Heights Orange Growers Association, the defendants in said Equity suit 1562; and referred said suit 1562 to a Special Master to take an account of the profits, gains and advantages arising from said infringement and granting a perpetual injunction against said defendants. [15]

That on November 25th, 1913, defendants, George D. Parker and Riverside Heights Orange Growers Association, made a motion in said Equity suit number 1562 in this court to enjoin complainant from the prosecution of this suit number A-44 and others; that said motion was granted by this Court; that complainant Fred Stebler appealed from the granting of such injunction to the United States Circuit Court of Appeals for the Ninth Circuit, the record and proceedings upon such appeal being made part hereof by reference, and being entitled in said United States Circuit Court of Appeals for the Ninth Circuit, Fred Stebler, Complainant, vs. Riverside Heights Orange Growers Association and George D. Parker, Defendants, number 2394, the opinion and decision of said United States Circuit Court of Appeals for the Ninth Circuit on said appeal 2394 being reported in 214 Fed. Rep. 550.

That thereafter in said Equity suit number 1562, complainant proceeded to an accounting before the Master appointed therein and after due proceedings had upon the accounting before said Master, the Master rendered his report to this court recommend-

ing and finding that complainant in said suit 1562 have and recover from defendant, George D. Parker, \$5,232.85 as gains and profits realized by the said George D. Parker from the manufacture and sale of machines in infringement of said patent, including the machines purchased by this defendant, Pomona Fruit Growers Exchange, from said George D. Parker, as well as including the other users referred to in Appeal 2394, and recommending and adjudging that complainant recover in said suit 1562 against George D. Parker the sum of \$6,237.35 as damages, such damages also including the said machines of defendant Pomona Fruit Growers Exchange and the [16] other user, defendants referred to in said appeal number 2394; that upon due proceedings had said Master's report was confirmed by this court and judgment entered accordingly.

That said judgment for said profits and damages and the costs in said suit number 1562 were and have been fully paid and satisfied by defendants, George D. Parker and Riverside Heights Orange Growers Association.

That on November 29, 1915, defendant in this suit number A-44, moved that this suit be dismissed at the cost and expense of complainant, and made a similar motion in the other suits against the user defendants referred to in such motions, upon the records and proceedings had in said suit number 1562 and upon the decision of the United States Circuit Court of Appeals for the Ninth Circuit on said appeal number 2394. At the hearing of said motions, complainant opposed defendants' motion and

moved that said suit number A-44 and all the others referred to in said appeal number 2394 be dismissed at the cost and expense of the defendants therein; on November 29th, 1915, this Court denied defendants' motion and granted complainant's motion dismissing this suit number A-44 and dismissing each of the suits against the user defendants referred to in appeal number 2394 at the cost and expense of the respective defendants therein, and the decree of dismissal in this suit number A-44 ordered, adjudged and decreed that complainant recover of defendant, Pomona Fruit Growers Exchange, the sum of \$36.20 and the decrees in the other suits against the user defendants referred to in Appeal number 2394 adjudged that complainant have judgment against said respective defendants for various sums of costs and disbursements. [17]

[Stipulation Re Statement of Proceedings, etc.]

The foregoing is stipulated and approved by the counsel for the respective parties as a statement of all the proceedings had or taken in this court in connection with the motion for dismissal of said suit and an agreed record upon which the said appeal of the defendant Pomona Fruit Growers Exchange shall be heard in the United States Circuit Court of Appeals for the Ninth Circuit from said judgment for costs and disbursements.

FREDERICK S. LYON,

Attorney for Complainant.

N. A. ACKER,

Attorney for Defendant.

[Endorsed]: No. A-44. United States District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Pomona Fruit Growers Exchange, Defendant. In Equity. Statement of Proceedings. Filed Jan. 26, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [18]

*In the United States District Court, Southern
District of California, Southern Division.*

IN EQUITY—No. A-44.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,
Defendant.

Petition for Order Allowing Appeal.

The defendant to the above-entitled suit, conceiving himself aggrieved by the final order and judgment made and entered by said Court in the above-entitled cause, on the 6th day of December, 1915, allowing costs to the complainant, upon the dismissal of the above-entitled suit, on motion of the complainant thereto, comes now, by his counsel, and petitions said Court for an order allowing him to prosecute an appeal from said order and judgment granting and allowing said costs to the complainant, to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf

made and provided, and also that an order be made fixing the sum of security which the defendant shall give and furnish upon such appeal, said security to act as a supersedeas bond, pending the determination of the said appeal by the said United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

N. A. ACKER, [19]

Solicitor and Counsel for Defendant.

[Endorsed]: In Equity. No. A-44. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Pomona Fruit Growers Exchange, Defendant. Petition for Order Allowing Appeal. Filed Jan. 20, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendant. [20]

*In the United States District Court, Southern
District of California, Southern Division.*

IN EQUITY—No. A-44.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,
Defendant.

Assignment of Errors.

Comes now the defendant to the above-entitled suit, and specifies and assigns the following as the errors upon which it will rely upon its appeal to the

United States Circuit Court of Appeals for the Ninth Circuit, from the final judgment and order entered in the above-entitled suit on the 6th day of December, 1915, awarding unto plaintiff costs, on the granting of the complainant's motion to dismiss said above-entitled suit.

That said District Court of the United States in and for the Southern District of California, Southern Division, erred as follows:

I.

That the Court erred in denying defendant's motion to dismiss the above-entitled suit.

II.

That the Court erred in not allowing costs to the defendant, upon the dismissal of the bill, on complainant's motion to dismiss. [21]

III.

That the Court erred in granting complainant's motion to dismiss the above-entitled suit, with costs unto the complainant.

IV.

That the Court erred in allowing unto the complainant a solicitor's fee of Twenty (20) Dollars in the above-entitled suit as a part of the costs therein, as taxed by the clerk of said court.

All of which is respectfully submitted.

N. A. ACKER,

Solicitor and Counsel for Defendant.

[Endorsed]: In Equity. No. A-44. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs.

Pomona Fruit Growers Exchange, Defendant. Assignment of Errors. Filed Jan. 20, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendant. [22]

[Order Allowing Appeal and Fixing Amount of Bond.]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. A-44.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,
Defendant.

Order Allowing an Appeal at a stated term, to wit, the July term, A. D. 1915, of the United States District Court, Southern District of California, Southern Division, held at the courtroom of the said court in the city of Los Angeles, county of Los Angeles, on the 6th day of December, 1915. Present: Hon. OSCAR A. TRIPPET, United States District Judge for the Southern District of California, Southern Division, sitting in Equity.

On motion of Nicholas A. Acker, Esq., solicitor and of counsel for defendant in the above-entitled suit,—

IT IS ORDERED, that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as prayed for in the petition for order allowing appeal from the final judgment and order heretofore filed and entered, dismissing the above-entitled suit, on motion of complainant herein, be and the same is hereby granted.

IT IS FURTHER ORDERED that the bond on appeal be fixed at the sum of TWO HUNDRED AND FIFTY DOLLARS (\$250.00) [23] the same to act as a supersedeas bond, and also as a bond for costs and damages on said appeal, and that on the filing of said bond all proceedings herein be stayed until the determination of the appeal by the said United States Circuit Court of Appeals for the Ninth Circuit.

OSCAR A. TRIPPET,
District Judge.

Dated January 20, 1916.

[Endorsed]: In Equity—No. A-44. U. S. District Court, Southern District of California, Southern Division.. Fred Stebler, Complainant, vs. Pomona Fruit Growers Exchange, Defendant. Order. Filed Jan. 20, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendant. [24]

*United States District Court, Southern District of
California, Southern Division.*

IN EQUITY—No. A-44.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,
Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That the United States Fidelity & Guaranty Company of Maryland, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto Fred Stebler, plaintiff in the above-entitled suit, in the penal sum of Two Hundred and Fifty Dollars (\$250.00), to be paid to the said Fred Stebler, his heirs, assigns and legal representatives, for which payment, well and truly to be made, the United States Fidelity & Guaranty Company of Maryland, binds itself, its successors, and assigns, firmly by these presents.

Sealed with corporate seal and dated this eleventh day of January, 1916.

The condition of the above obligation is such that whereas the defendant to the above-entitled suit, is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to re-

verse the final order or decree made, rendered and entered on the 6th day of December, 1915, by the District Court of the United States, for the Southern District of California, Southern Division, in the above-entitled suit by [25] the said Court allowing costs to the plaintiff on the granting of plaintiff's motion for a dismissal of said above-entitled suit.

NOW, THEREFORE, the condition of the above obligation is such that if the defendant to the above-entitled suit shall prosecute his said appeal to effect and answer all costs which may be adjudged against him if he fails to make good his appeal, this obligation shall be void; otherwise to remain in full force and effect.

[Seal]

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY.

By VAN R. KELSEY.

Its Attorney in Fact.

Approved 1/20/16.

TRIPPET.

Judge.

State of California,

County of Los Angeles.—ss.

On this 11th day of January, in the year one thousand nine hundred and sixteen, before me, Hallie D. Winebrenner, a notary public in and for said county and State, residing therein, duly commissioned and sworn, personally appeared Van R. Kelsey, known to me to be the duly authorized attorney in fact of the United States Fidelity and Guaranty

Company, and the same person whose name is subscribed to the within instrument as the attorney in fact of said company, and the said Van R. Kelsey duly acknowledged to me that he subscribed the name of the United States Fidelity and Guaranty Company thereto as principal and his own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed [26] my official seal the day and year in this Certificate first above written.

[Seal] HALLIE D. WINEBRENNER,
Notary Public in and for Los Angeles County, State
of California.

[Endorsed]: In Equity—No. A-44. U. S. District Court, Southern District of California, Southern Division. Fred Stebler, Complainant, vs. Pomona Fruit Growers Exchange, Defendant. Bond on Appeal. Filed Jan. 20, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendant. [27]

UNITED STATES OF AMERICA.

*District Court of the United States, Southern
District of California.*

Clerk's Office.

IN EQUITY—No. A-44.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,

Defendant.

Praecipe [for Transcript of Record.]

To the Clerk of said Court:

Sir: Please prepare as a transcript of record on the appeal in this suit by defendant from the final order or decree of the Court, a copy of each of the following, and duly certify the same as the Transcript on Appeal, in accordance with the Equity Rules of the Supreme Court:

1. Motion to dismiss.
2. Minute record of the clerk relative to the denial of defendant's motion; motion of complainant to dismiss, and the granting of complainant's motion.
3. Final order or decree of court.
4. Petition for order allowing appeal.
5. Assignment of errors.
6. Order allowing appeal.
7. Bond on appeal for cost in the sum of \$250.00.
8. Stipulated statement of proceedings.

N. A. ACKER,

Solicitor for Defendant. [28]

Received a copy and *acknowledging* due service of above Praeipe this 7th day of February, 1916.

FREDERICK S. LYON,

Solr. for Complt.

[Endorsed]: No. A-44. U. S. District Court, Southern District of California, Southern Division. Fred Stebler vs. Pomona Fruit Growers Exchange. Praeipe for Transcript on Appeal. Filed Feb. 12, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [29]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. A-44—EQ.

FRED STEBLER,

Complainant,

vs.

POMONA FRUIT GROWERS EXCHANGE,

Defendant.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing twenty-nine typewritten pages, numbered from 1 to 29, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Motion to Dismiss, Minute Order of November 29, 1915, Decree of Dismissal with costs against defend-

ant, Statement of Proceedings, Petition for Order Allowing Appeal, Assignment of Errors, Order Allowing Appeal, Bond on Appeal and Praecipe for Transcript on Appeal in the above and therein entitled action, and that the same together constitute the record on appeal as specified in the said Praecipe for Transcript on Appeal filed in my office on behalf of the appellant by his solicitor of record.

I do further certify that the cost of the foregoing record is \$12.30, the amount whereof has been paid me by Pomona Fruit Growers Exchange, the appellant in said action.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United [30] States of America, in and for the Southern District of California, Southern Division, this 19th day of April, in the year of our Lord one thousand nine hundred and sixteen, and of our Independence the one hundred and fortieth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By Leslie S. Colyer,

Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled April 19, 1916. L. S. C.] [31]

[Endorsed]: No. 2792. United States Circuit Court of Appeals for the Ninth Circuit. Pomona Fruit Growers Exchange, a Corporation, Appellant,

vs. Fred Stebler, Appellee. Transcript of Record.
Upon Appeal from the United States District Court
for the Southern District of California, Southern
Division.

Filed May 4, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals,
for the Ninth Circuit.

Paul P. O'Brien,
Deputy Clerk.

**[Order Enlarging Time to File Record and Docket
Cause to April 29, 1916.]**

*In the United States Circuit Court of Appeals, Ninth
Judicial Circuit.*

POMONA FRUIT GROWERS EXCHANGE,
Appellant,

vs.

FRED STEBLER,

Appellee.

Good cause appearing therefor, it is hereby
ordered, that the time heretofore allowed said appel-
lant to docket said cause and file the record thereof,
with the clerk of the United States Circuit Court of
Appeals for the Ninth Circuit, be and the same is
hereby enlarged and extended to and including the
29th day of April, 1916.

Dated at Los Angeles, California, February 19th,
1916.

TRIPPET,
U. S. District Judge.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Pomona Fruit Growers Exchange, Appellant, vs. Fred Stebler, Appellee. Order Extending Time to File Record. Filed Feb. 26, 1916. F. D. Monckton, Clerk.

[Order Enlarging Time to File Record and Docket Cause to July 1, 1916.]

United States Circuit Court of Appeals, for the Ninth Circuit.

(No. A-44—EQ. S. D.)

POMONA FRUIT GROWERS EXCHANGE,
Appellant,

vs.

FRED STEBLER,

Appellee.

Good cause appearing therefor, it is hereby ordered that the time within which appellant in the above-entitled action may file record and docket cause in the United States Circuit Court of Appeals for the Ninth Circuit be and the same hereby is extended to and including the 1st day of July, 1916.

Los Angeles, 3/28, 1916.

TRIPPET,
District Judge.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Pomona Fruit Growers Exchange, Appellant, vs. Fred Stebler, Appellee. Order Extending Time to Docket Cause and File Record. Apr. 3, 1916. F. D. Monckton, Clerk.

No. 2792. United States Circuit Court of Appeals for the Ninth Circuit. Two Orders Under Rule 16 Enlarging Time to July 1, 1916, to File Record Thereof and to Docket Case. Refiled May 4, 1916. F. D. Monckton, Clerk.

